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ers recite the terms of the statute; further instructions defining their duties may be properly refused, although the court should give the commissioners duly requested instructions as to the manner of the discharge of their duties, and what evidence and argument was proper, for the commissioners are in the nature of a jury.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 105.]

2. Eminent Domain (§ 228*)—Proceedings—Commissioners—Notification of Appointment.—The commissioners appointed in eminent domain proceedings should be notified by the clerk or some disinterested person, and it is improper practice for counsel of various parties to notify the commissioners of their appointment.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 105.]

3. Eminent Domain (§ 237 (4)*)—Proceedings—Entertaining of Commissioners—Setting Aside Award.—Before counsel for plaintiff arrived, it was arranged by counsel for defendants whose lands were sought to be condemned that one of the defendants should entertain the counsel and the commissioners at dinner. This was communicated to the commissioners, and when plaintiff's senior counsel arrived, he agreed, not knowing at that time that a very recent decision of the highest court condemned the practice. Held, that a judgment based on the report of the commissioners must be set aside, it being improper for either party to entertain them, and the consent of plaintiff's counsel under the circumstances not precluding plaintiff from objecting.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 109.]

Error to Circuit Court, Botetourt County.

Proceedings by the Virginia-Western Power Company against W. T. Kessinger and others, together with proceedings by the same plaintiff against Annie P. Kessinger and others. Plaintiff's exceptions to the commissioners' report being overruled, it brings error. Reversed.

F. W. King, of Clifton Forge, for plaintiff in error.

Haden & Haden, for defendants in error.

GATHRIGHT v. FULTON et al.

Nov. 15, 1917.

[94 S. E. 191.]

1. Partnership (§ 25*)—Contract—Fraud.—A court of equity has jurisdiction to rescind and declare void ab initio a contract of partnership procured by fraudulent representations.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 836.]

2. Partnership (§ 25*)—Contracts—Fraudulent Representations.—Appellant, having unsuccessfully endeavored to sell land to respond-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ents, entered into an agreement of partnership, whereby the three purchased the land. Title to the premises was for convenience taken in the name of one of the respondents. On their discovery that appellant had misrepresented to them the purchase price of the premises, respondents, after giving appellant an opportunity to sell the premises at an advance, excluded him from participation in the management of the property. Held, that as appellants elected to repudiate the contract on the ground of fraud instead of affirming the same, and as equity treats the contract as void ab initio, the premises which were the subject-matter of the partnership contract, together with all other partnership property, must be ordered sold, so that the parties could be placed in status quo as far as possible, and the exclusion of appellant and return of his investment was unauthorized.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 836.]

3. Equity (§ 427 (2)*)—Pleading—Prayer.—Where both appellant and respondents filed bills for relief growing out of differences with respect to a partnership, and a dissolution of the partnership was the appropriate relief, such relief should be granted, though it was not the special relief prayed for by the parties.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 132; 8 Va.-W. Va. Enc. Dig. 221.]

4. Partnership (§ 305*)—Dissolution—Division of Capital.—Neither party to a partnership on dissolution has the right to compel a division in kind or require the other to accept what, according to a valuation, his interests may be worth, but each is entitled to have the property sold and converted into money.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 886.]

Appeal from Corporation Court of Staunton.

Bill by Z. M. K. Fulton and another against T. M. Gathright, consolidated with a bill by the latter against the former. From the decree for Fulton and another, Gathright appeals. Reversed.

J. M. Perry, of Staunton, and *Geo. A. Revercomb*, of Covington, for appellant.

H. H. Byrd and *Wm. M. McAllister*, both of Warm Springs, for appellees.

NORFOLK & W. RY. CO. *v.* SPATES.

Nov. 15, 1917.

[94 S. E. 195.]

1. Railroads (§ 482 (4)*)—Fires from Engines—Evidence Admissible.—Evidence that other engines of defendant railroad at other

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.